

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

KAREN M. TREMBLAY, ELIZABETH A.	:	
MURPHY, STEPHEN A. MOWRY,	:	
GARY C. MOWRY and MARGO M.	:	
BUTLER,	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 14-542S
	:	
AMERIPRISE FINANCIAL	:	
SERVICES, INC.,	:	
Defendant.	:	

**REPORT AND RECOMMENDATION**

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Before the Court is the unopposed motion of Defendant Ameriprise Financial Services, Inc., to enforce the settlement of this case. ECF No. 25. There is no dispute that the case is settled. The only issue is that one of the Plaintiffs (Stephen A. Mowry) signed the Settlement Agreement and Release of All Claims (“Settlement Agreement”) and had his signature witnessed, but failed to appear before a U.S. Consular official near his residence in Phuket, Thailand, to have his signature notarized, as required by the Settlement Agreement. Based on these circumstances, as well as because Plaintiffs advised their counsel of record that he might be replaced, Plaintiffs’ counsel has declined to authorize the filing of a stipulation of dismissal with prejudice in accordance with ¶ 2.9 of the Settlement Agreement.

Accordingly, Defendant has come to the Court for relief. It asks the Court to issue an Order enforcing the Settlement Agreement, declaring that Plaintiff Stephen Mowry is deemed to have duly acknowledged the Agreement as his voluntary act and deed despite the absence of a notarized acknowledgment, directing payment by Defendant in accordance with the Settlement

Agreement, and dismissing the action with prejudice. Defendant also asks the Court to award it the reasonable attorney's fees incurred in making this motion to enforce the settlement.

The motion was filed on December 27, 2016; no objection has been filed. It is now referred to me for report and recommendation. See 28 U.S.C. § 636(b)(1)(B). Finding that no hearing is necessary, I recommend that the motion to enforce the settlement be granted, but I do not recommend that this Court award any attorney's fees. The reasons follow.

## **I. BACKGROUND**

The parties agreed to a settlement in July 2016 and entered into the written Settlement Agreement (ECF No. 25-2 at 11-24), which was executed by all parties by October 2016. All of the signatures are witnessed. However, one signature, that of Plaintiff Stephen Mowry, was not notarized as the Agreement requires, despite the efforts of his own counsel and of the attorney for Defendant. ECF No. 25-1 at 1; ECF No. 25-2 (Zaretsky Decl.) ¶ 2. Correspondence attached to the motion reveals that several attempts were made to assist Mr. Mowry in having his signature notarized, including advising him that a United States Consular official would be in Phuket on November 18, 2016. However, Plaintiff's counsel told Defendant that he did not believe that Mr. Mowry would "go through all of that effort just to settle this case." ECF No. 25-2 (Zaretsky Decl.) ¶¶ 7, 8, 9; Id. at 26, 28. Plaintiffs' attorney next advised that Plaintiffs were considering replacing him and he still did not know whether Mr. Mowry had ever had his signature notarized. Based on these events, Plaintiffs' counsel questioned that he "could, at this time, enter into a Stipulation of Dismissal, with prejudice, of this matter, as required by the Agreement." Id. ¶ 11.

With the jury empanelment set for January 4, 2017, Defendant asked the Court to adjourn the trial based on the settlement. It represented that it would file a motion to enforce settlement

because Mr. Mowry “refused to have his signature notarized and an acknowledgement signed by a notary public, because of what he [Stephen Mowry] claimed were logistical difficulties in gaining access to a notary.” ECF No. 24 at 1. The letter advises that Plaintiffs’ counsel indicated “he does not anticipate that any of his clients, . . . including Mr. Mowry, will oppose the Motion to Enforce that I will be filing.” Id. at 2. No counter to this correspondence was written. As of this date, Plaintiffs’ original counsel continues to be of record in the case, yet no objection to the motion to enforce has been filed.

## **II. LAW AND ANALYSIS**

### **A. Enforcing the Settlement Agreement**

This Court has the inherent power to supervise and enforce settlement agreements entered into by parties to an action pending before it. Dankese v. Defense Logistics Agency, 693 F.2d 13, 16 (1st Cir. 1982). It is well settled that in a matter arising under the court’s diversity jurisdiction where there is a challenge to an enforceable settlement agreement, the forum state’s law rules. See D’Agostino v. Fed. Ins. Co., 969 F. Supp. 2d 116, 126 (D. Mass. 2013); Hansen v. Rhode Island’s Only 24-Hour Truck & Auto Plaza, Inc., 962 F. Supp. 2d 311, 314 (D. Mass. 2013) (“federal court sitting in diversity applies the choice-of-law framework of the forum state”) (citing Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941)). In Rhode Island, settlement agreements are governed by general contract law principles. Friedrich v. S. Cty. Hosp. Healthcare Sys., at \*1 (D.R.I. Jan. 5, 2017) (citing Furtado v. Goncalves, 63 A.3d 533, 538 (R.I. 2013)). In this case, the Agreement itself states that it “shall be interpreted, construed and governed under the laws of the State of Rhode Island . . . .” ECF No. 25-2 at 17 ¶ 2.17. As a fully executed writing, the Settlement Agreement plainly satisfies the requirements of Rhode Island law for a binding agreement.

There are two issues. First, for Defendant to disburse the settlement payment under the terms of the Settlement Agreement, the Mowry signature must be deemed to have been notarized. Second, the case must be dismissed with prejudice. I find that the parties have entered into a binding settlement and recommend that the Court order that these final steps be taken so that the settlement can be implemented.

**B. Attorney's Fees**

This Court has the inherent power to award attorney's fees against a litigant who has "acted in bad faith" or "vexatiously, wantonly, or for oppressive reasons." Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991); Mullane v. Chambers, 333 F.3d 322, 337 (1st Cir. 2003). In determining whether sanctions are appropriate, the court must consider "the presence or absence of any bad faith or obdurate conduct on the part of either party, or any unjust hardship that a grant or denial of fee-shifting might impose." Farone v. Sciarretta, 131 F.R.D. 29, 30 (D.R.I. 1990). Bad faith includes delay or disruption of the litigation. Sanchez v. Esso Standard Oil de P.R., Inc., Civil No. 08-2151 (JAF), 2010 WL 3809990, at \*18 (D.P.R. Sept. 29, 2010). In this District, such fees have been awarded in circumstances where a party demonstrates bad faith by the repudiation of an agreement to procure a better deal or to wreak vengeance on another party. Abdullah v. Evolve Bank & Trust, No. CA 14-131 S, 2015 WL 4603229, at \*6 (D.R.I. July 29, 2015).

In this instance, it is difficult for the Court to evaluate whether it was obduracy or simply the difficulty of the circumstances that caused Defendant to be compelled to resort to this motion. Certainly, there is no suggestion of any improper conduct by Plaintiffs' counsel. Only Mr. Mowry's conduct can be criticized, yet it is far from clear that he understood that his behavior would or could expose him to a personal fee award. There certainly is no evidence that

Mr. Mowry was trying to renegotiate to get a better deal or that he acted with animus towards Defendant. Based on this record, it is too much of a stretch for the Court to find that Mr. Mowry intentionally acted in bad faith by delaying the implementation of the Settlement Agreement. Certainly, such a finding could not be made by the clear and convincing standard established by the Court in Abdullah, 2015 WL 4603229, at \*6. Accordingly, I decline to recommend that the Court award attorney's fees.

### **III. CONCLUSION**

For the reasons stated above, I recommend that Defendant's motion to enforce settlement (ECF No. 25) be GRANTED, except to the extent that it seeks an award of attorney's fees. Specifically, I recommend that the Court order that Plaintiff Stephen Mowry is deemed to have duly acknowledged his signature on the Settlement Agreement, that payment of the settlement sum shall be made upon the receipt by Defendant's attorneys of an original counterpart of the Settlement Agreement signed and acknowledged by all Plaintiffs, except for Plaintiff Stephen Mowry, and that the case be dismissed forthwith with prejudice and without any award of costs.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan  
PATRICIA A. SULLIVAN  
United States Magistrate Judge  
April 5, 2017